THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

-

WRIT PETITION Nos.5303 of 1995

-

Dated 03-03-2006

-

Between:

D.Balraj.

..... PETITIONERS

AND

The Managing Director, A.P.Travel & Tourism Development Coporation Ltd, Yatrinivas, S.P.Road, Secunderabad & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

-

WRIT PETITION No.5303 of 1995

-

O R D E R:

Questioning the proceedings of the second respondent dated 21-01-1994 and the proceedings of the first respondent dated 26-11-1994, the present writ petition is filed.

Facts, to the extent necessary, are that the petitioner was appointed as Helper in the respondent-Corporation vide proceedings dated 30-09-1986 with effect from 20-09-1986. On
21-01-1994, one Neelavathi, a scavenger and co-worker complained to the

respondent-officials that the petitioner had tried to misbehave with her. Petitioner would contend that the said Neelavathi withdrew her complaint. It is the case of the petitioner that without conducting any enquiry or without giving an opportunity to him and without considering the withdrawal letter of the said Neelavathi, the second respondent had issued proceedings dated 21-01-1994 discharging the petitioner and one Sri Ramulu as well as the said Neelavathi from service. Petitioner submits that he made representations on 04-02-1994, 16-02-1994, 12-03-1994 and 25-06-1994 to the first respondent and since no orders were passed thereon, he filed W.P.No.12567 of 1994, questioning the order of the second respondent dated 21-01-1994. This Court, by order dated 12-07-1994, disposed of the writ petition at the admission stage directing the respondents to consider the representations made by the petitioner and also the representation made by the said Neelavathi within eight weeks from the date of receipt of the order. Petitioner would contend that by the impugned proceedings dated 26-11-1994, the first respondent had rejected his case without even considering the earlier representations or the representation made by the said Neelavathi. Petitioner would contend that since he was neither issued a notice nor was given an opportunity without an enquiry being conducted in this regard, both the earlier proceedings dated 21-01-1994 and the subsequent proceedings dated 26-11-1994 are liable to be quashed.

A counter affidavit is filed on behalf of the respondents, wherein it is stated that the petitioner was only a casual labour engaged on daily wage basis only as and when there was work in the Yatrinivas Guest House, wherein several tourists, who visited the city, stayed with their families and as such, any misbehaviour and misdeed on the part of any employee would result in damaging the reputation of the respondent-Corporation and the Guest House. It is stated that based on the complaint of a woman employee and a daily wage worker, the services of all the three casual employees involved in the said incident on 20-01-1994, were dispensed with, with a view to protect the reputation of the Guest House. Respondents would contend that the petitioner's claim that the complainant had withdrawn her complaint could not be accepted since there was ample scope to believe that the petitioner could have forced the complainant to withdraw the same and since all the three employees were only casual employees, engaged on day to day basis whenever there was work, the Corporation had dispensed with the services of all the three employees. It is contended that the representation of the

petitioner was taken into consideration before the order dated 26-11-1994 was passed. It is further contended that the petitioner's contention that he was entitled for regularisation was also without any basis since a clear vacancy must be available to regularize the services of an employee in addition to the length of service.

Sri S.Chandraiah, learned counsel appearing on behalf of Sri C.Narender, learned counsel for the petitioner, would submit that even in the case of a casual or temporary employee, no order which casts stigma could have been passed without a proper enquiry in this regard or without giving an opportunity of being heard to the employee. Learned counsel would submit that since the very foundation of the order of termination, passed on 20-01-1994, was the alleged incident of misbehaviour, a departmental enquiry ought to have been conducted, and the petitioner should have been given an opportunity to adduce evidence and cross-examine the said Neelavathi and based on the report of the enquiry officer alone, could action have been taken. Learned counsel would submit that in the absence of an enquiry being held in this regard, termination of the services of the petitioner was patently illegal and he must be deemed to have been continued in service. Learned counsel would submit that if the petitioner is deemed to continue in service, then he would have satisfied the requirements of G.O.Ms.No.212, dated 22-04-1994, and would have therefore been entitled to be regularised in service.

Sri Nandigama Krishna Rao, learned Standing counsel for the respondents, would submit that in the earlier writ petition i.e. W.P.No.12567 of 1994, the impugned order dated 21-01-1994, was under challenge. Learned Standing counsel would submit that in W.P.No.12567 of 1994, without seeking adjudication on merits, the petitioner had only requested that his representation be considered and since this Court had merely directed the respondents to consider the petitioner's representation, it was not open for the petitioner, having permitted W.P.No.12567 of 1994 to attain finality, to once again question the very same proceedings of the second respondent dated 21-01-1994, again in the present writ petition. Learned counsel would contend that principles analogous to explanation IV to Section 11 CPC would apply and that the earlier order passed by this Court would disentitle the petitioner from seeking the very same relief in the subsequent writ petition on the ground of *res judicata*.

It is well settled that no order which casts a stigma could have been passed

without putting the delinquent employee on notice. The question, however, is as to whether the proceedings dated 21-01-1994 does indeed cast a stigma. The petitioner has not even chosen to file a copy of the proceedings dated 21-01-1994 before this Court though the said order is impugned in this writ petition. Further the petitioner had challenged the very same proceedings dated 21-01-1994 in the earlier round of litigation and instead of seeking adjudication on merits, had merely requested that his representations be disposed of. This Court, by order dated 12-07-1994, merely directed the respondents to consider the petitioner's representation and did not adjudicate upon the validity of the order dated 21-01-1994. It is not even the petitioner's case that the first respondent is the appellate authority under the rules or that the representations which he filed were by way of an appeal and that the dismissal of the writ petition was on the ground of existence of alternative remedy. It is also to be noticed that this Court in W.P.No.12567 of 1994, did not grant liberty to the petitioner to challenge the validity of the proceedings dated 21-01-1994 after the representations were disposed of. Mere submission of a representation would not enure to the benefit of the petitioner nor would he be entitled to challenge the earlier proceedings dated 21-01-1994. It is only the legality or otherwise of the subsequent order dated 26-11-1994, which can be examined in this writ petition. It cannot be said that there was no justification on the part of the respondents in rejecting the petitioner's representation, vide proceedings dated 26-11-1994.

Sri S.Chandraiah, learned counsel appearing on behalf of Sri C.Narender, learned counsel for the petitioner, would seek leave of the Court to avail the alternative remedy under the Industrial Disputes Act. While making it clear that this Court has not passed any order granting liberty to the petitioner to approach the Labour Court/Industrial Tribunal, this order shall not preclude the petitioner from availing such remedies as are open to him in law.

The writ petition is accordingly dismissed. However, in the circumstances without costs.

_____

03-03-2006

usd